

REMARKS

Applicants respectfully request reconsideration of this application, in view of the foregoing amendments and the reasons that follow.

The Final Office Action and the cited references have been considered carefully. Each of the rejections is overcome, as the following paragraphs explain, essentially by Applicants' addressing the particular point raised by the Examiner, thus placing the application in condition for allowance.

Upon entry of this amendment, claims 1-28 will be pending.

Rejections based upon 35 U.S.C. §112

The Examiner has rejected Claims 1-27 for failing to support the phrase "at different locations." Claim 1 and its dependents have been revised to clarify that "different locations" denotes different propagation factories or plants. Applicants draw support for this revision from the original specification, for example, at page 1, lines 21-24, page 2, line 24, page 6, lines 6-7, page 12, lines 23-25, and page 17, lines 30-31, and in paragraph bridging pages 4 and 5. Thus, Applicants believe that the present claims fully comply with the "written description" requirement and incorporate no new matter.

Rejections based upon 35 U.S.C. §103

In sections 7-12 of the Final Office Action, the Examiner has rejected claims 1-27 for obviousness over Sing in view of other references.

As explained, the present claims relate a method for supplying, at different factories or plants, starter cultures of consistent quality. In particular, the claimed methodology has the advantage of providing concentrated inoculum subsets to propagation factories or plants in diverse locations, which empowers the direct inoculation of cultivation media and the production of starter cultures with consistent quality.

Sing teaches making a starter culture by (i) inoculating a growth medium with an inoculum of 10^9 CFU/g to a final concentration of 10^7 CFU/g, (ii) growing the medium to 10^9 CFU/gm, and then (iii) adding the starter culture to milk to produce a dairy product. By contrast, Sing does not even hint at an approach whereby, for instance, the inoculum first is concentrated and then divided into subsets, which are shipped to different propagation

factories for inoculation. Moreover, Sing's method requires the inoculum to be diluted to 10^7 CFU/g and grown to 10^9 CFU/g, before it is used to inoculate milk; that is, it involves a two-step inoculation procedure.

Informed by Sing, therefore, the skilled artisan would not have considered it obvious to concentrate the inoculum material, to divide it into subsets, and then to ship a subset to a different propagation factor or plant, as recited in claim 1. Certainly, there was no suggestion to ship a plurality of the subsets to several such different locations, respectively (see claim 28).

The Examiner appears to acknowledge this distinction between the cited art and Applicants' claimed invention. Nevertheless, the Examiner states that "the location of where the actual steps take place do not patentably distinguish the method from the prior art, since practicing the methods at different locations would not materially change the culture method" (page 22, fourth sentence in the first full paragraph). Having admitted that this distinction exists, however, the Examiner cannot simply discount, as "immaterial," the fact that the claimed method yields a "supply of starter cultures [that] has a consistent quality" (claim 1). To the contrary, this advantage is tied to the very distinction, admitted by the Examiner, that is without counterpart or even a hint in the prior art of record. Thus, Applicants respectfully request the Examiner reconsider the arguments presented herewith and withdraw the rejections.

In section 8 of the Final Office Action, the Examiner enunciates a rejection founded on Sing in view of Czulak. As noted above, Sing teaches a method of making a starter culture for inoculating milk. The secondary reference, Czulak, teaches inoculating milk with a fat content of between 0.3% and 1.5%, with the goal of obtaining a dairy product with a reduced fat content.

The Examiner did not point to any specific claims against which Czulak was cited, although claim 26 may be implicated by its recitation of "skimmed milk." In any event, Czulak cannot compensate for the above-discussed deficiencies in the primary reference, Sing. That is, the skilled artisan would not have considered it obvious to come up with the claimed method for supplying starter cultures of consistent quality to inoculate "any conventional medium" comprising one or more single milk components, where skimmed milk is included among the milk components.

For these reasons alone, claim 1 and its dependents clearly are patentable over the prior art illustrated by Sing and Czulak. There also are other grounds for patentability over the prior art, detailed below.

1. Kosikowski (US Patent No. 5,098,721)

In section 7 of the Final Office Action, the Examiner cited Kosikowski as evidence that, at the time of the claimed invention, it would have been obvious to concentrate and divide an inoculum into subsets. The relevant text is reproduced below:

A mother culture is a small volume of inoculated growth medium, for example cultured milk or whey which is periodically transferred, usually daily, into a plurality of growth medium containers with the best resulting culture selected for making a larger volume of starter, e.g. a bulk starter...The mother or bulk starters can be stored in several forms. One form is a dry state or powder, another form is frozen and the frozen product which can be in the concentrated form.

Thus, Kosikowski teaches the steps of inoculating a plurality of medium containers, selecting the best resulting culture, and making a bulk starter. It involves a two-step inoculation procedure, which does not suggest that the stock inoculum is "directly" inoculated in the cultivation medium, as recited in claim 4. Moreover, Kosikowski's method comprises a selection step, which implies the inconsistency of the subset inoculum, contrary to claim 1 ("...the supply of starter cultures has a consistent quality"). Kosikowski's method also requires transfer of inoculum periodically, "usually daily," which teaches away from the shipping of inoculum to different propagation factories, as presently recited.

2. Lizak (US Patent No. 5,952,020)

In section 9 of the Final Office Action, the Examiner relies on Lizak for the teaching that the starting cultures can be stored in liquid, frozen, and dried forms. This disclosure does not suggest either of (A) thawing a frozen inoculum and (B) suspending a dried inoculum in an aqueous medium before direct inoculation, as recited in claims 9 and 10, respectively. As to these manipulations, the Examiner is obliged to provide evidence for her conclusory statement, *sans* evidence, that it was "well known in the art" to thaw frozen cultures and to suspend dried cultures in a liquid medium, before inoculation.

Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 28 September 2008

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